

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

JERRAD ELLSBERRY §  
v. § CIVIL ACTION NO. 6:11cv648  
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Jerrad Ellsberry, proceeding through retained counsel, filed this application for the writ of habeas corpus challenging the legality of his confinement. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Ellsberry complained of a re-incarceration proceeding which was conducted after an apparently erroneous release. The Respondent was ordered to answer the petition and did so. After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed as moot with regard to Ellsberry's challenges to the validity and propriety of the erroneous release, and that the petition be dismissed with prejudice as to Ellsberry's challenge to the continued viability of his conviction and sentence based upon his re-incarceration. The Magistrate Judge also recommended that a certificate of appeal be denied *sua sponte*.

No objections have been received to the Report of the Magistrate Judge; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-

to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 15) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is hereby DISMISSED as moot with regard to Ellsberry's challenges to the validity and propriety of the erroneous release, and DISMISSED with prejudice as to Ellsberry's challenge to the continued viability of his conviction and sentence based upon his re-incarceration. It is further

ORDERED that the Petitioner Jerrad Ellsberry is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all other motions which may be pending in this civil action are hereby DENIED.

**So ORDERED and SIGNED this 17th day of September, 2012.**

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized initial "L".

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**